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8 Attorneys for Defendants, PEAK FORECLOSURE SERVICES INC.

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAVID ANTHONY AVILA; JOHN  
HAYNE,

Plaintiff,

v.

11 NEWREZ LLC d/b/s SHELLPOINT  
12 MORTGAGE SERVICING; JP MORGAN  
MORTGAGE ACQUISITION  
CORPORATION; PEAK  
FORECLOSURE SERVICES INC.,

Defendant.

No. 2:24-cv-02264-TLN-CSK

Motion No. PPR-\*

**NOTICE OF MOTION TO VACATE  
DEFAULT AND DEFAULT JUDGMENT  
PURSUANT TO FRCP 55(c)**

Hearing –

Date : 02/06/2025

Time : 02:00 PM

Place : Robert T. Matsui United States Courthouse  
501 I Street  
Sacramento, CA 95814

Courtroom 2, 15th floor

**Judge:** Chief District Judge Troy L. Nunley

Defendants, NEWREZ, LLC, d/b/a SHELLPOINT MORTGAGE SERVICING, et al.,  
("Defendants" hereinafter) for its Motion to Vacate Default, state as follows:

1           1. **INTRODUCTION.**

2           Defendants Motion to Vacate Default is based upon Federal Rule of Civil Procedure 55(c),  
3           and 60, which provides that a default may be set aside based upon “Good Cause”. Plaintiff’s<sup>1</sup>  
4           alleged Service of Process is defective on its face and therefore, the merits, and therefore, does not  
support a valid entry of Default against Defendants.

5           2. **FACTS.**

6           The Court entered Default against Defendants on **December 2, 2024** based upon a  
7           Defective Proof of Service filed by Plaintiff stating alleged service upon “PEAK FORECLOSURE  
8           SERVICES INC.” on “9/13/2024”; such 9/13/2024 Proof of Service however, fails to specify  
9           Service of Process on any “*authorized agent*”, nor specifying any “*name or relationship to the  
party named in Item 3a*”, **attached as Exhibit “A”**. Therefore, Plaintiff’s Proof of Service is  
10           Defective on its face, and constitutes a substantial Due Process prejudicial irregularity, for which  
11           the Court’s 12/2/2024 Default must be set aside, and vacated.

12           Defendant’s Motion is based upon the grounds that the Defendant was not properly served.  
13           Defendant’s Proof of Service, and Defendant’s Declaration in Support, will be submitted  
henceforth.

14           3. **CONCLUSION.**

15           WHEREFORE, Defendants respectfully seek to Vacate the 12/2/2024 Default for Good  
16           Cause pursuant to Federal Rule of Civil Procedure 55(c), and 60, so that it may properly defend  
17           this proceeding under the Federal Rules of Civil Procedure. Simply, Defendants were never  
18           properly served with Plaintiff’s alleged Motion.

1 Dated: December 31, 2024

PROBER & RAPHAEL, A LAW CORPORATION

2 /s: CHRISTINA FLAVIN

CHRISTINA FLAVIN

3 Attorney for Plaintiff

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, Bar number, and address):  
**Fatherly Freedom Inc**  
**PO BOX 60**  
**Twain Harte, CA 95383**

TELEPHONE NO.: 209-591-0406 FAX NO. (Optional):  
E-MAIL ADDRESS (Optional):  
ATTORNEY FOR (Name): DAVID AVILA, ET AL.

FOR COURT USE ONLY

**FILED**

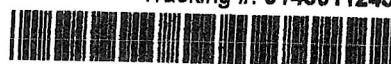
SEP 23 2024

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY *[Signature]*  
DEPUTY CLERK

|  |                      |
|--|----------------------|
| <b>United States District Court, Eastern District of California</b>          |                      |
| STREET ADDRESS: 501 I St. Suite 4-200  |                      |
| MAILING ADDRESS: 501 I St. Suite 4-200                                       |                      |
| CITY AND ZIP CODE: Sacramento 95814  |                      |
| BRANCH NAME: Robert T. Matsui Federal Courthouse                             |                      |
| PLAINTIFF/PETITIONER: DAVID AVILA, ET AL                                     | CASE NUMBER:         |
| DEFENDANT/RESPONDENT: NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING, ET AL | 2:24-CN-2264-TLN-CSK |
| <b>PROOF OF SERVICE OF SUMMONS</b>   |                      |
| Ref. No. or File No.:<br>2:24-CN-2264-TLN-CSK                                |                      |

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of (specify documents):  
**VERIFIED CLAIM FOR DAMAGES; Complaint; Summons**
- a. Party served (specify name of party as shown on documents served):  
**Peak Foreclosure Services, Inc.**
- b.  Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b whom substituted service was made) (specify name and relationship to the party named in item 3a):
- Address where the party was served:  
**5900 Canoga Avenue, Suite 220, Woodland Hills, CA 91367**
- I served the party (check proper box)
  - by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 09/13/2024 at (time): 3:34 PM
  - by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
    - (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - I thereafter caused to be mailed (by first class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc § 415.20). Documents were mailed on (date): from (city): or  a declaration of mailing is attached.
    - I attach a declaration of diligence stating actions taken first to attempt personal service.

BY FAX



c.  by mail and acknowledgement of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

(1) on (date):  (2) from (city):

(3)  with two copies of the *Notice and Acknowledgement of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgement of Receipt.*) (Code Civ. Proc., § 415.30)

(4)  to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40)

d.  by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

a.  as an individual defendant.

b.  as the person sued under the fictitious name of (specify):

c.  as occupant.

d.  On behalf of (specify) Peak Foreclosure Services, Inc.

under the following Code of Civil Procedure section:

|   |   |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation)          | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other: <input type="text"/>                  |

7. Person who served papers

a. Name: Christopher Michael Padgett  
 b. Address: 15632 mayall street, north hills, CA 91343  
 c. Telephone number: 818-966-7120  
 d. The fee for service was: \$ 105.00  
 e. I am:

(1)  not a registered California process server.  
 (2)  exempt from registration under Business and Professions Code section 22350(b).

(3)  registered California process server:  
 (i)  owner  employee  independent contractor. For: ABC Legal Services, LLC  
 (ii)  Registration No.: 2021162522 Registration #: 6779  
 (iii)  County: County of Los angeles County: Los Angeles

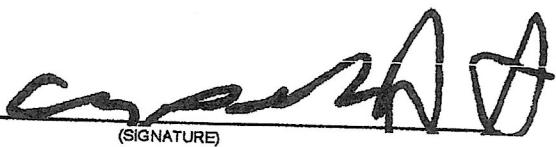
BY FAX



8.  I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
OR  
9.  I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 09/13/2024

**Christopher Michael Padgett**  
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

  
(SIGNATURE)

Page 3 of 3



REF: 2:24-CN-2264-TLN-CKS

**PROOF OF SERVICE OF SUMMONS**

Tracking #: 0143011245

